

**DEPARTMENT OF STATE REVENUE**

**LETTER OF FINDINGS NUMBER: 99-0513P**

**Sales Tax**

**For the Period Ended March 31 1999**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUE(S)**

I. **Tax Administration** – Returned Check Penalty

**Authority:** IC 6-8.1-10-5; 45 IAC 15-11-5

Taxpayer protests the penalty assessed.

**STATEMENT OF FACTS**

Taxpayer protests the penalty assessed for a returned check. On July 1, 1999 the taxpayer was charged a ten percent (10%) penalty for a returned check and on July 23, 1999 a one hundred percent (100%) penalty for failure to make the check good.

One of the owners of the business was incarcerated for attempted murder on July 9, 1999 and the other owner (father) committed suicide on July 14, 1999. A General Durable Power of Attorney designated the incarcerated owner's girlfriend as his true and lawful attorney-in fact, which was dated August 3, 1999. The girlfriend originally protested the penalty in a letter dated September 22, 1999 because she was unable to retrieve the notification of the returned check for several reasons including the receipt of the power of attorney. Included with the letter was a credit card payment for the sales tax due and a request for abatement of penalty and an updated interest calculation.

At hearing, the new owner, sister to the incarcerated owner, protests the one hundred percent (100%) penalty due to several circumstances for which she had no control; i.e. at trial and sentencing of the brother, death and funeral of the father, and no power of attorney at hand to obtain mail in the post office box. Because the brother was incarcerated, she states she inherited the business.

1. Tax Administration – Penalty

**DISCUSSION**

Taxpayer was billed a one hundred percent penalty for failure to make a guaranteed payment for a bad check. At the time the department billed the taxpayer, one of the owners was incarcerated and the other shortly thereafter committed suicide. No power of attorney was at hand to obtain mail in the post office box and the liability was increased to a one hundred percent (100%) penalty for a returned check.

Taxpayer made payment of the tax due with a request for the waiver of the one hundred percent (100%) penalty. The department reduces the one hundred percent (100%) penalty to a ten percent (10%) negligence penalty.

**FINDING**

Taxpayer's protest is sustained in part.